

1 I. Service of the Complaint

2 As is outlined in the Scheduling Order issued in this case, except when other provisions
3 are made pursuant to an application to proceed in forma pauperis, plaintiff **shall** serve a copy of
4 the **(1)** summons, **(2)** complaint, **(3)** notice of availability of a Magistrate Judge and the form of
5 consent/ decline to jurisdiction of United States Magistrate Judge (See Local Rule 305(a)), and
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7 **(4)** the Scheduling Order, within **twenty (20) days** of plaintiff filing the complaint.

8 If plaintiff is proceeding in forma pauperis, the United States Marshal usually serves the
9 complaint. However, if plaintiff is not proceeding in forma pauperis, then plaintiff or legal
10 counsel is responsible for service and then filing a proof of service without delay. See Local Rule
11 210.

12 Lawsuits for review of administrative decisions made by the Commissioner of Social
13 Security are prosecuted against the Commissioner of Social Security. Fed.R.Civ.P. 4(i)(2) and (3)
14 provides, in substance, that to serve the Commissioner in his official capacity, the party **must**
15 serve **(1)** the United States, and **(2)** the Commissioner.

16 To serve the United States, a party **must**:

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18 **(1) deliver** a copy of the summons and complaint to the United States Attorney for the
19 district where the action is brought, or to an Assistant United States Attorney or clerical employee
20 whom the United States Attorney designates in a writing filed with the Court; or, **send** a copy of
21 the summons and complaint, by certified mail only, to the Civil Process Clerk at the United States
22 Attorney's Office; and,

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24 **(2) send** a copy of the summons and complaint, by certified mail **only**, to the Attorney
25 General of the United States in Washington, D.C.; and,

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27 **(3) send** a copy of the summons and complaint, by certified mail **only**, to the
28 Commissioner (the officer of the United States whose order is challenged by the lawsuit) in San

1 Francisco, CA. Fed.R.Civ.P. 4(i)(1)-(3). Initial service of process is thus sufficient if plaintiff
2 serves, by certified mail only, copies of the summons and complaint on: Office of the United
3 States Attorney

4 Initial service of process is thus sufficient if plaintiff serves, by certified mail only, copies
5 of the summons and complaint on:

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7 Office of the United States Attorney
Civil Process Clerk
8 2500 Tulare Street, Suite 4401
9 Fresno, CA 93721

10 Office of the Attorney General of the United States
950 Pennsylvania Avenue, NW
11 Washington, D.C. 20530-0001

12 Office of the General Counsel
13 Social Security Administration 333 Market Street, Suite 1500
San Francisco, CA 94105

14 after which a proof of service must be filed with the Court without delay pursuant to Local Rule
15 210. If plaintiff is proceeding in forma pauperis, the United States Marshal generally completes
16 the proof of service and files it with the Court; however, if plaintiff is not proceeding in forma
17 pauperis, it is plaintiff's duty to promptly file a proof of service with the Court.

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19 II. Attempt at Informal Resolution of the Case

20 Pursuant to the Scheduling Order, within **one hundred twenty (120) days** after service of
21 the complaint, defendant is required to serve a copy of the administrative record on plaintiff and
22 also file the administrative record with the Court, which serves as the answer to the complaint in
23 this proceeding.

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25 Once the administrative record has been filed, the parties **must** try to resolve the case
26 informally. In this process, the parties **must** exchange informal briefs in the form of letters about
27 the case to see if they can agree that the case should be sent back, or "remanded," to the Social
28 Security Administration for a further hearing by an administrative law judge.

1 In the letter brief, plaintiff **must** briefly set forth **(1)** the issues in the case, **(2)** the reasons
2 why plaintiff thinks that plaintiff is entitled to Social Security benefits, and **(3)** why the decision
3 to deny benefits should be remanded.

4 The letter brief must be marked “Confidential Letter Brief”, should not be filed with the
5 Court, and **must** be served on defendant **within thirty (30) days from the date defendant**
6 **served plaintiff with the administrative record, by mailing copies to all the attorneys listed**
7 **on the court docket as representing defendant**, Commissioner of Social Security, at the
8 addresses noted on the court docket.

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10 The name of the attorney or attorneys representing defendant are added to the court docket
11 at the time the Court receives defendant’s response to the complaint which, again, usually
12 consists of the administrative record. Sometimes the court docket lists not only an attorney at the
13 Office of the General Counsel of the Social Security Administration in San Francisco, CA, but
14 also an attorney at the United States Attorney’s Office in Fresno, CA. In these particular cases, it
15 will then be necessary for plaintiff to mail copies of the confidential letter brief to more than one
16 attorney for defendant.

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18 Defendant’s confidential letter brief **must** be served on plaintiff no later than **thirty-five**
19 **(35) days** after defendant is served with plaintiff’s confidential letter brief.

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21 If the parties agree to a remand, then the case will go back to the Social Security
22 Administration before any formal briefs are filed with the Court, and without the Court ever
23 considering the merits of the case. The parties’ agreement to remand the case **must** be set forth in
24 writing in a document titled “Stipulation and Order,” which **must** be signed and filed with the
25 Court no later than **fifteen (15) days** after defendant served its confidential letter brief on
26 plaintiff. See Local Rule 143(a)(1) & (b).

27 The informal letter briefs exchanged by the parties are confidential in the sense that they
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1 are not filed with the Court. If the parties are unable to agree to a remand, the letters are not part
2 of the case file and, thus, are not before the Court if and when the Court finally considers the case
3 on the merits.

4 III. Briefs

5 If, after exchanging confidential letter briefs, the parties are unable to agree to a remand of
6 the case, then the parties **must** file formal briefs with the Court as directed in the Scheduling
7 Order. It is only after the formal briefs are filed with the Court that the Court will consider the
8 merits of the case and make a decision.

9 A. Plaintiff's Opening Brief

10 Plaintiff's opening brief **must** be filed and served no later than **thirty (30) days** from the
11 date defendant's informal letter brief was served on plaintiff. Plaintiff must serve a copy of the
12 opening brief on all the attorneys listed for defendant on the court docket of the case at the
13 addresses noted on the court docket.

14 Plaintiff **must** also file the original opening brief, together with a copy, with the Court, by
15 either personal delivery or via U.S. mail to:

16 Office of the Clerk
17 United States District Court
18 Eastern District of California
19 2500 Tulare Street, Suite 1501
20 Fresno, CA 93721

21 Plaintiff's opening brief **must** contain the following:

22 (1) a plain description of plaintiff's alleged physical or emotional impairments, when
23 plaintiff contends they became disabling, and how they disabled plaintiff from work;

24 (2) a summary of the administrative proceedings before the Social Security
25 Administration;

26 (3) a summary of the relevant testimony at the administrative hearing;
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1 (4) a summary of all relevant medical evidence, including an explanation of the
2 significance of clinical and laboratory findings, and the purpose and effect of prescribed
3 medication and therapy;

4 (5) a recitation of the Social Security Administration's findings and conclusions relevant
5 to plaintiff's claims;

6 (6) a short, separate statement of each of plaintiff's legal claims stated in terms of the
7 insufficiency of the evidence to support a particular finding of fact or reliance on an erroneous
8 legal standard; and,

9 (7) argument separately addressing each claimed error.

10 All references to the administrative record and all assertions of fact **must** be accompanied
11 by citations to the administrative record. Argument in support of each claim of error **must** be
12 supported by citation to legal authority and explanation of the application of such authority to the
13 facts of the particular case. Briefs that do not substantially comply with these requirements will
14 be stricken. A document that is stricken becomes null and void and is not considered by the Court
15 for any purpose.

16 Plaintiff is further advised that failure to timely file an opening brief will result in
17 dismissal of the action.

18 B. Defendant's Brief

19 Pursuant to the Scheduling Order, defendant's responsive brief is due filed and served on
20 plaintiff within thirty (30) days from the date of service of plaintiff's opening brief on defendant.

21 C. Plaintiff's Reply Brief

22 Plaintiff may file a reply brief, but is not required to do so, within fifteen (15) days from
23 the date defendant served its responsive brief on plaintiff. Plaintiff must serve a copy of the reply
24 brief on defendant by serving the United States Attorney for the Eastern District of California at
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1 the address in Fresno, CA, noted above. Plaintiff must also file the original reply brief, together
2 with a copy, with the Court at the Court's address in Fresno, CA, noted above.

3 Plaintiff's reply brief should respond to the arguments made in defendant's responsive
4 brief.

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6 IV. Motion to Dismiss

7 In some cases, instead of serving and filing an administrative record, defendant may file a
8 motion to dismiss the case pursuant to Fed.R.Civ.P. 12., **within one hundred twenty (120) days**
9 from the date defendant is served with plaintiff's complaint.

10 Plaintiff may oppose a motion to dismiss by filing and serving opposition to the motion
11 within **fourteen (14) days** from the date the motion to dismiss was served on plaintiff, and should
12 be titled "Opposition to Defendant's Motion to Dismiss." See Local Rule 230(c).

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14 The Court will consider a motion to dismiss only after receiving opposition from plaintiff,
15 or after the time for filing opposition has passed. In ruling on a motion to dismiss the case, the
16 Court may either (1) deny the motion and proceed with the case, ordering the parties to proceed to
17 file the administrative record, attempt informal resolution, and file briefs; or, (2) grant the motion
18 to dismiss, and dismiss all or part of the case.

19 V. The Court's Decision on the Merits

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21 The Court will consider the merits of the case only after all briefs have been filed, and
22 may enter a judgment affirming, modifying, or reversing the determination of the Social Security
23 Administration. The Court may or may not remand the case to the Social Security Administration
24 for a further hearing.

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1 VI. Summary of Deadline Calculations

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3 See Section I. above	Service	due 20 days after filing complaint
4 See Section II. above	Administrative Record	Due 120 days after service
5 See Section III. A. above	Plaintiff's Opening Brief	due 95 days after administrative record lodged with court
6 See Section III. B. above	Defendant's Opening Brief	due 30 days after plaintiff's opening brief filed
7 See Section III. C. above	Plaintiff's Reply Brief	due 15 days after defendant's brief filed

8 VII. Rules for Litigating the Action

9 Plaintiff is informed of the following:

10 A. In litigating this action, the parties must comply with the Federal Rules of Civil
11 Procedure (Fed.R.Civ.P.), and the Local Rules of the United States District Court, Eastern District
12 of California ("Local Rules"). A copy of the Local Rules may be obtained in the Clerk's Office at
13 no charge.

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15 Local Rule 206 is a special rule for social security actions. Specifically (a)(2) and (3)
16 generally states that complaints **shall** contain the last four digits of plaintiff's social security
17 number **only**, i.e., XXX-XX-1234, and that plaintiff shall privately disclose to defendant, within
18 **five (5) days** after a request is made to plaintiff, the full social security number of plaintiff.

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20 Therefore, plaintiff shall refrain from disclosing the entire social security number on any
21 filings.

22 **FAILURE TO COMPLY WITH THE LOCAL RULES, FEDERAL RULES, OR A**
23 **COURT ORDER, INCLUDING THIS ORDER, WILL BE GROUNDS FOR DISMISSAL**
24 **OR OTHER APPROPRIATE SANCTIONS.** See Local Rule 110; Fed.R.Civ.P. 41(b).

25 B. Documents intended to be filed with the Court **must** be mailed to the Clerk of the
26 Court in Fresno, CA, at the address noted above. See Local Rule 134(a). All documents
27 inappropriately mailed directly to a judge's chambers will be stricken from the record. A
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1 document requesting a court order **must** be styled as a motion, not a letter. See Fed.R.Civ.P. 7.

2 C. Each document submitted for filing **must** include the original signature of the
3 filing party or parties. Local Rule 131; Fed.R.Civ.P. 11(a). All documents submitted without the
4 required signature(s) will be stricken. Each separate document **must** be separately stapled. See
5 Local Rule 130. If a document is stapled behind another document, it will not be filed and will
6 not enter the court docket.
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8 D. All documents filed with the Court **must** be submitted with an additional legible
9 copy to be conformed for the Court's use. See Local Rule 133(d)(2). A document submitted
10 without an extra copy for the Court's use will be stricken. If the filing party wishes the Court to
11 return a file-stamped copy, an additional copy **must** be provided for that purpose (i.e., an original
12 and two copies, one for the Court's use and one to be returned to the filing party), together with a
13 self-addressed, stamped envelope. The Court cannot provide copy or mailing service for a party,
14 even for an indigent plaintiff proceeding in forma pauperis. Copies of documents from the
15 Court's file may be obtained in the Clerk's Office at the cost of fifty (\$.50) cents per page.
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17 E. After any defendant has appeared in an action by filing a pleading responsive to
18 the complaint (i.e., an answer or a motion to dismiss), all documents filed with the Court must
19 include a proof of service stating that a copy of the document was served on the opposing party.
20 See 28 U.S.C. § 1746; F.R.Civ.P.5; Local Rule 135. **A document submitted without the**
21 **required proof of service will be stricken.** Where a party is represented by counsel, service on
22 the party's attorney of record constitutes effective service.
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24 F. A pro se party has an affirmative duty to keep the Court and opposing parties
25 apprised of a current address. If plaintiff moves and fails to file a notice of change of address,
26 service of court orders at plaintiff's prior address shall constitute effective notice. See Local Rule
27 182(f). If mail directed to plaintiff is returned by the United States Postal Service as
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1 undeliverable, the Court will not attempt to re-mail it. If plaintiff's address is not updated, in
2 writing, within sixty (60) days of mail being returned, the action will be dismissed for failure to
3 prosecute. See Local Rule 183(b).

4 IT IS SO ORDERED.

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6 Dated: April 10, 2018

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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